

46 Am. Jur. 2d Judges § 122

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

3. Relationship as Grounds for Disqualification

b. Relationship to Attorneys

§ 122. Relationship to attorneys in criminal cases

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[Relationship to attorney as disqualifying judge, 50 A.L.R.2d 143](#)

The rules providing for the disqualification of judges applies to criminal as well as civil cases where judicial functions are to be exercised.¹ Thus, various statutes and rules require disqualification in criminal cases when there is a specified familial relationship between the judge and an attorney employed in the cause or the prosecuting attorney.² For instance, under a statute disqualifying a judge when related to an attorney for either of the parties by consanguinity or affinity within the third degree, a judge will be disqualified in arraignment proceedings in which the district attorney is his or her son.³ In addition, a judge is justified in disqualifying him- or herself where a member of his or her son-in-law's law firm represents the prosecution in a murder trial.⁴

On the other hand, under a statute providing for disqualification where a judge is related to any "attorney of record,"⁵ or related to an attorney in the "action," the fact that a judge is related to a member of the prosecutor's office does not require disqualification of the judge where the relative does not actually participate in the criminal prosecution of a defendant or personally appear in the proceedings.⁶

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Footnotes

- 1 § 85.
- 2 *State v. Jacobs*, 37 So. 3d 994 (La. 2010).
A judge was not required to recuse himself from a theft prosecution on the grounds that the defense counsel was the judge's nephew, a relationship in the third degree by consanguinity or affinity, where the disqualification statute required a relationship within the second degree. *State v. Mercadel*, 120 So. 3d 872 (La. Ct. App. 4th Cir. 2013), writ denied, 133 So. 3d 681 (La. 2014).
- 3 *Hoff v. Eighth Judicial Dist. Court In and For Clark County*, 79 Nev. 108, 378 P.2d 977 (1963).
- 4 *State v. Miller*, 232 La. 541, 94 So. 2d 661 (1957).
- 5 § 121.
- 6 *People v. Moffat*, 202 Ill. App. 3d 43, 148 Ill. Dec. 50, 560 N.E.2d 352, 63 Ed. Law Rep. 285 (1st Dist. 1990); *State v. Logan*, 236 Kan. 79, 689 P.2d 778 (1984); *In re Jacobs*, 802 N.W.2d 748 (Minn. 2011); *Granger v. Kubinieć*, 166 A.D.2d 931, 560 N.Y.S.2d 582 (4th Dep't 1990).

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